

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Pacific Gas and Electric
Company Proposing Cost of Service and Rates
for Gas Transmission and Storage Services for
the Period 2015-2017 (U39G).

Application 13-12-012
(Filed December 19, 2013)

And Related Matter.

Investigation 14-06-016

**CITY OF SAN BRUNO'S MOTION TO COMPEL PACIFIC GAS AND ELECTRIC
COMPANY TO RESPOND TO DATA REQUEST SEEKING PRODUCTION OF
DOCUMENTS AND TO APPOINT A SPECIAL DISCOVERY MASTER;
DECLARATION OF BRITT K. STROTTMAN IN SUPPORT OF CITY OF SAN
BRUNO'S MOTION TO COMPEL PACIFIC GAS AND ELECTRIC COMPANY TO
RESPOND TO DATA REQUEST SEEKING PRODUCTION OF DOCUMENTS AND TO
APPOINT A SPECIAL DISCOVERY MASTER; PROPOSED RULING GRANTING
MOTION OF THE CITY OF SAN BRUNO TO COMPEL DISCOVERY AND
APPOINTING A SPECIAL DISCOVERY MASTER**

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I. INTRODUCTION

Pursuant to Rule 11.3 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure (Rules), the City of San Bruno (San Bruno) respectfully submits this Motion for an Order to Compel Pacific Gas and Electric Company (PG&E) to produce documents in response to San Bruno's data request. San Bruno filed this data request to determine the nature and scope of PG&E's improper ex parte communications with the CPUC, in light of the company's September 15, 2014 Notice of Improper Ex Parte Communications filing. The company's press release on the same date declared PG&E internally analyzed 65,000 emails exchanged with the Commission. PG&E professed a "no excuses" mantra and a desire to fully comply with the CPUC's investigation into the scandal. Yet, out of the universe of 65,000 communications PG&E internally reviewed, it chose to produce only 24 communications.

The logical next question is: "What's in the other emails?" San Bruno attempted to find out through its data request. PG&E refuses to comply outside of its self-built parameters of what the company discloses. It claims the request is irrelevant and overbroad. Given PG&E's track record of ex parte violations and misrepresentations before this Commission, San Bruno is understandably skeptical of these objections and with the highly limited scope of PG&E's self-

reporting. San Bruno thus seeks to compel disclosure of all the email communications specifically to ensure that no other improper ex parte dialogue between CPUC and PG&E occurred. Proof of such improper communications would violate the due process rights of the parties involved in these proceedings. The parties and ratepayers who will be burdened with PG&E's proposed rate increases are entitled to ascertain the scope of PG&E's misconduct as an important factor in the resolution of this proceeding.

San Bruno met and conferred regarding the data request in compliance with Rule 11.3(a). San Bruno and PG&E cannot agree on the applicability of PG&E's objections and asserted privileges. San Bruno believes the objections are without merit and ignore the broad scope of this proceeding. Improper influence in another proceeding is probative of PG&E's undue influence with the Commission here.

Accordingly, given the complex relationship between the Commission and the largest public utility corporation it regulates, San Bruno asks the Commission to order the appointment of a special discovery master to oversee PG&E's compliance with the data request and determine the scope of responsive disclosure. A special discovery master will provide an important arbiter of impartiality in light of the fact that the Commission cannot fully act as an impartial decisionmaker in this motion, because of some of its own contributions in the recent ex parte emails.

With the appointment and review by a special discovery master, San Bruno is willing to limit its data request to those communications which would reflect improper communications, influence, or manipulations of PG&E before the CPUC. San Bruno believes that a special discovery master will provide a necessary mechanism to guarantee that the parties have "seen all we need to see" to ensure a fair resolution of this ratesetting case.

II. RELEVANT FACTS

This chain of events started when San Bruno filed a motion for an Order to Show Cause for sanctions against PG&E in I.11-02-016, I.11-11-009, and I.12-01-007 (Line 132

Proceedings).¹ That motion argued that PG&E engaged in at least 41 improper ex parte communications with Commissioners and their staff and attached email communications to support that PG&E engaged in ex parte violations.²

A. PG&E Publicized It Has Uncovered 65,000 Email Exchanges Between PG&E and the CPUC on the Same Day It Filed Its Notice of Improper Ex Parte Communications.

In response to San Bruno's motion, PG&E stated that it began an internal review of its communications with the CPUC.³ PG&E's press release was issued contemporaneously with its September 15, 2014 Notice of Improper Ex Parte Communications filed in these proceedings. The press release states: "these [ex parte] communications were identified after the company voluntarily chose to broaden its internal review of any potential ex parte communications well beyond those communications referenced in a San Bruno motion filed last July. The expanded review included more than 65,000 emails to and from the Commission since early 2010."⁴ PG&E filed an Updated Notice of Improper Ex Parte Communications filing on October 6, 2014.⁵

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¹ See generally, San Bruno July 28, 2014 filing against PG&E in Line 132 Proceedings. That motion is still pending.

² The emails were uncovered by San Bruno only after the Commission produced the communications in response to a Public Records Act lawsuit filed by San Bruno after the Commission failed to properly respond to its requests for public records. (See *City of San Bruno v. California Public Utilities Commission* San Francisco Superior Court Case No. CGC14-537139.)

³ See http://www.pge.com/about/newsroom/newsreleases/20140915/pge_takes_action_to_address_ex_parte_communication_issues_identified_in_self-report_to_cpuc_today_pledges_no_excuses_compliance.shtml. This is attached as Exhibit A to the Declaration of Britt Strottman filed concurrently herewith (Strottman Dec.).

⁴ *Id.*

⁵ The details of those filings and their aftermath are well known by the Commission and the parties and need not be repeated here.

B. San Bruno's Data Request and PG&E's Response.

On October 7, 2014, San Bruno issued a data request to PG&E that requested the “65,000 emails” referenced in PG&E’s press release.⁶ San Bruno also served two other data requests, but for purposes of this motion, San Bruno does not seek to compel those requests. San Bruno sent a voicemail and email on October 20, 2014, after San Bruno received no response from PG&E.⁷ PG&E ultimately objected to San Bruno’s data request on the basis that the information is irrelevant, overbroad, and that the request was denied in ALJ Yacknin’s Ruling.⁸ During the meet and confer efforts, PG&E also claimed the documents were protected by the attorney-client privilege and attorney work product doctrine.⁹

C. San Bruno's Meet and Confer Efforts.

San Bruno attempted to meet and confer with PG&E, but its efforts were unsuccessful. The parties engaged in a meet and confer conference on November 5, 2014. During this conference, PG&E reiterated its refusal to produce the 65,000 emails and instead proposed that San Bruno provide “search terms” to narrow the scope.¹⁰ San Bruno responded that such a limitation was unworkable, because presumably the communications will not self-identify themselves as “ex parte” or “improper.” San Bruno cannot possibly know the nature of all these communications and search terms could easily develop terms that miss large segments of relevant documents.

During the meet and confer conference, San Bruno posed the following questions to PG&E representatives and its counsel:

⁶ Exhibit B to Strottman Dec.

⁷ Exhibit C to Strottman Dec.

⁸ Exhibit D to Strottman Dec.

⁹ ¶ 6 to Strottman Dec.

¹⁰ ¶ 7 to Strottman Dec.

Question 1: Exactly how many emails was PG&E referring to when it said in the press release that it had reviewed the 65,000 emails?

Answer 1: No one on the call was able to answer that question.

Question 2: Have the emails been numbered?

Answer 2: The emails are located on a “review platform.” The set of documents are archived at the company. No one on the call could say whether the documents were numbered.

Question 3: Have the emails been categorized or organized by date, author, or recipient, and if so, what are those categories?

Answer 3: PG&E refused to respond, stating that the answer is protected by the attorney work product doctrine.

Question 4: Are the emails subject to a litigation hold?

Answer 4: The emails related to the explosion were subject to a litigation hold right after the explosion; however, no one on the call directly answered the question of whether the 65,000 emails identified by PG&E were subject to a litigation hold.

Question 5: Have all of the emails been printed, and if so, where are they located?

Answer 5: No.

Question 6: Have the emails been the subject of a request or an order to preserve them, and if so, from whom and when?

Answer 6: They have been requested, but PG&E refused to respond from whom or when.

Question 7: What was PG&E’s criteria for deciding which emails to review, and who made the decision to use that criteria?

Answer 7: PG&E refused to respond, claiming the attorney-work product doctrine applies.

Question 8: Is there any internal investigation going on right now with respect to the emails?

Answer 8: PG&E refused to respond, claiming the attorney-work product doctrine applies.

Question 9: Have the emails been provided to anyone outside of PG&E?

Answer 9: No one on the call knew the answer.¹¹

San Bruno summarized this meet and confer conference in an email to facilitate an informal resolution. PG&E responded that “several of your characterizations” did not accurately reflect the discussions, but failed to identify how San Bruno’s characterizations were inaccurate. In any event, PG&E dismissed San Bruno’s effort and stated further discussions would not be productive.¹²

III. ARGUMENT IN SUPPORT OF MOTION TO COMPEL

A. The Rules Broadly Permit San Bruno to Obtain the Requested Discovery.

Rules 10.1 and 11.3 provide that parties may obtain discovery. Rule 10.1 provides:

“[A]ny party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.”

Rule 11.3(a) permits San Bruno to bring a Motion to Compel:

“A motion to compel or limit discovery is not eligible for resolution unless the parties to the dispute have previously met and conferred in a good faith effort to informally resolve the dispute. The motion shall state facts showing a good faith attempt at an informal resolution of the discovery dispute presented by the motion, and shall attach a proposed ruling that clearly indicates the relief

¹¹ Exhibit E to Strottman Dec.

¹² Exhibit F to Strottman Dec.

requested.”

1. The Data Request Seeks Relevant Evidence and is Not Overbroad.

For purposes of this motion, San Bruno is willing to limit the production of documents to a special discovery master which would reflect any form of improper communications between PG&E and the CPUC. This would include evidence of any violations of the Rules, improper influence, or ex parte communications with the Commission seeking an unfair advantage in the proceedings before the Commission. The parties are entitled to know that the fundamental principles of due process and fairness can prevail before the Commission. San Bruno’s data request asks PG&E to produce 65,000 emails that may demonstrate additional improper ex parte contact between the CPUC and the state’s largest utility company. Furthermore, California law provides that any email received by a public entity is a public record and subject to disclosure, unless specifically exempt from disclosure by statute.¹³

PG&E claims that this data request is irrelevant and outside the scope of these proceedings. By this argument’s logic, San Bruno’s motion to compel efforts to investigate PG&E’s improper contacts must be filed in all proceedings and yet no proceeding before the Commission. Relevance is not a proper basis for PG&E’s refusal to produce the documentation; Rule 10.1 permits broad discovery and that the requested documentation need only be reasonably calculated to lead to the discovery of admissible evidence.

The data request is relevant regardless. This proceeding will determine whether PG&E is entitled to over \$1 billion in customer rate increases. Responsive documents may pertain to another proceeding, but are nonetheless relevant, because they may demonstrate that PG&E has manipulated the system to gain an unfair advantage here. The data request seeks to obtain evidence that intervenors cannot receive a fair hearing in this proceeding before the Commission regarding the sensitive issue of consumer rate increases. PG&E’s engaging in improper influence, even in other proceedings, is relevant to establish that a fair proceeding cannot be had

¹³ Gov. Code §§ 6252(e), 6252(g).

in this complex, PG&E-controlled GT&S rate case.

We now know that PG&E's Vice President of Regulatory Affairs, Brian Cherry, and other members of PG&E's Regulatory Affairs department, were improperly advocating for a favorable Administrative Law Judge in this billion dollar rate proceeding.¹⁴ The emails attached to PG&E's October 6, 2014 Supplemental Notice show that PG&E witnesses, Sumeet Singh and Mel Christopher,¹⁵ knowingly contributed substantive information regarding the merits of disputed Line 147 issues that was then forwarded in a private communication to Commissioner Florio.¹⁶ This email chain shows that PG&E was lobbying a Commissioner to obtain an unfair and secret advantage and using PG&E witnesses to do so.

We know that PG&E communicated with the Commission in a deliberate effort to reduce the fines and penalties to be issued against the company in the Line 132 Proceedings. This included providing decisionmakers with evidence outside of the record through private dinners and private email communications to sway their decisions in the proceedings.¹⁷

We know PG&E engaged in improper efforts to obtain private advantages for itself at the risk of other parties and ratepayers. What is unknown is the scope of the improper advocating. San Bruno's motion seeks to find the answer to this unknown. At this point, the Commission and the parties are forced to accept PG&E's "voluntarily" disclosures as complete. PG&E cannot be the arbiter of what is or is not disclosed. This unknown extent of PG&E's bad acts can be ascertained through analysis of the known parameters of the 65,000 emails. As the former Secretary of Defense could eloquently attest,¹⁸ we need to know what we don't know.

¹⁴ See accompanying exhibits to PG&E's September 15, 2014 Ex Parte Notice.

¹⁵ See PG&E Direct Testimony, Chapter 4 and PG&E Rebuttal, Chapter 10, respectively.

¹⁶ See accompanying exhibits to PG&E's October 6, 2014 Supplemental Notice.

¹⁷ San Bruno July 28, 2014 Motion for Order to Show Cause against PG&E in Line 132 proceedings; PG&E's October 6, 2014 Updated Notice of Improper Ex Parte Communications.

¹⁸ "There are known knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don't know. But there are also unknown unknowns. There are things we don't know we don't know." – Donald Rumsfeld, February 2002.

It must also be noted that PG&E archived the 65,000 emails and stored them in an electronic “review platform” for easy access. PG&E admits that its internal investigation already culled the 65,000 emails,¹⁹ so PG&E’s collection and production of the data would not be unduly burdensome.

2. Judge Yacknin’s Ruling is Irrelevant to San Bruno’s Data Request.

PG&E claims that it need not comply with San Bruno’s data request because the request was denied in that law and motion judge’s ruling imposing sanctions.²⁰ PG&E’s mischaracterizes the Ruling; the Ruling is irrelevant for purposes of San Bruno’s data request. In her ruling, Judge Yacknin concluded that the 65,000 emails were beyond the scope of the Commission’s Order to Show Cause hearing, which investigated PG&E’s September 15, 2014 “judge shopping” ex parte filing.²¹ The ruling did not preclude San Bruno from seeking the documentation through other means, such as a data request. The Ruling simply concluded that the Order to Show Cause was not the proper forum to address this request, because it was limited in scope to the judge shopping emails.

If there was any doubt as to the applicability of Judge Yacknin’s ruling, the decision modifying the ruling confirms its irrelevance to San Bruno’s data request and this motion. The decision that modified her ruling clarifies:

“These sanctions and remedies are rendered in response only to the self-reported violations that PG&E disclosed on September 15, 2014 and that were the subject of the October 7, 2014 hearing in this proceeding. This decision does not preclude Commission action on any other violations in this proceeding or other proceedings that may be discovered in the future.”²²

San Bruno is entitled to discover those other violations via its data request to PG&E.

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¹⁹ See Exhibits A and E to Strottman Dec.

²⁰ Exhibit D to Strottman Dec.

²¹ Law and Motion Judge’s Ruling Imposing Sanctions for Violations of Ex Parte Rules at 16. The Ruling also assumed that intervenors requested the 65,000 emails as a means to evaluate Commissioners’ bad acts. This is not the intent of San Bruno’s data request.

²² November 23, 2014 Decision Modifying Law and Motion Judge’s Ruling Imposing Sanctions for Violation of Ex Parte Rules (D.14-11-041) at 3.

B. The Requested Emails Are Not Privileged.

PG&E also claims that its 65,000 communications with the CPUC are protected under the attorney-client privilege or work product privilege. The Commission has held that the party seeking protection of its documents “always bears the burden of proof.”²³ San Bruno does not believe PG&E can withstand its burden here. It is illogical that emails between PG&E and the CPUC are “confidential communications between client and lawyer.”²⁴ It is further illogical that such emails would contain PG&E’s attorneys’ legal impressions.²⁵ San Bruno seeks to discover whether PG&E engaged in any improper influences or manipulations with Commissioners and their staff. In fact, it assumed that no attorney was consulted when PG&E engaged in illegal ex parte communications with the Commission, lest certain licenses to practice law be jeopardized. There exists a presumption that attorneys were not consulted while engaging in illegal acts, and if so, then no privilege would exist under that scenario.²⁶

C. The Requested Communications to the Commission Show PG&E Has Waived Any Asserted Privilege.

Even if PG&E’s privilege claims have merit, PG&E waived its privilege when it knowingly disclosed the information to the CPUC. PG&E’s right to claim attorney-client privilege is waived if the “holder” of the privilege “has disclosed a significant part of the communication or has consented to disclosure made by anyone.”²⁷ PG&E’s voluntary disclosure of information in the form of external email communications with the CPUC constitutes a clear waiver of privilege.

²³ *In re Order Instituting Rulemaking and Implement Senate Bill No. 1488*, 2006 WL 1971372 (2006) at *12 (D.06-06-066).

²⁴ Evid. Code §§ 952, 954.

²⁵ See Code Civ. Proc. § 2018.030.

²⁶ Evid. Code § 956; Code Civ. Proc. § 2018.050 (crime-fraud exception to privilege).

²⁷ Evid. Code § 912(a).

PG&E claims that its communications to the Commission did not waive its privilege because of the “common interest” doctrine. This “nonwaiver” doctrine stands for the position that parties with common legal interests may share privileged information without losing the afforded protection.²⁸ For the common interest doctrine to apply, the two parties exchanging the information must have a common interest in: 1) securing legal advice related to the same matter; and 2) the communication is made to advance their shared interest in securing legal advice on that common matter.²⁹ Any involvement of an *unnecessary* third person involved in the communications destroys the confidentiality and the privilege is waived.³⁰ It is essential that the participants in the exchange have a reasonable expectation that the information will remain confidential.³¹

The common interest doctrine does not apply here. By communicating with a public agency, PG&E departed from its “circle of trust” with no reasonable expectation of privacy. Regulator and regulatee do not have a conceivable “common interest” of a legal nature where PG&E’s attorney’s advice would further the interests of the CPUC. The Commission is cognizant that: “We are a public agency that regulates public utilities, and most of our business must be conducted in a public forum. Allowing public access to documents is part and parcel of an open decision making process.”³² PG&E cannot reasonably argue that it expected that a public agency intended to preserve the confidentiality of its emails.

PG&E has itself placed at issue its putative privileged communications. It has admitted

²⁸ *OXY Res. California LLC v. Sup. Ct.* (2004) 115 Cal.App.4th 874, 887-888; *Seahaus La Jolla Owners Ass’n v. Sup. Ct.* (2014) 224 Cal.App.4th 754, 770.

²⁹ *Seahaus La Jolla, supra*, 224 Cal.App.4th at 770.

³⁰ *OXY Resources, supra*, 115 Cal.App.4th at 890.

³¹ *Id.* at 891.

³² D.06-06-066, *supra*, at *17.

that it participated in illegal ex parte communications with the CPUC. PG&E brought up the 65,000 email number.³³ In furtherance of this good faith attempt to develop a better regulatory model, PG&E should be willing to disclose the communications it has cited.

PG&E cannot succeed under a selective waiver theory in disclosing certain “privileged” communications with the CPUC, while continuing to assert it against San Bruno’s request, as this finds no support in the policies set forth in the statute governing attorney work product privilege.³⁴ As the Commission has stated previously: “A party may not insist on the protection of the attorney-client privilege for damaging communications while disclosing other selected communications because they are self-serving.”³⁵

D. Public Interest, Trust, and Transparency Demand That These Communications Be Exposed.

If one does the math, PG&E emailed the Commission 36 times a day on average over a five-year period (2010-2014). The parties to this proceeding have a right to know what the communications contain, even if that information may cause a similar public outcry like the “judge shopping scandal” caused from PG&E ex parte filings. This is especially true given the nature of these proceedings where PG&E seeks \$1 billion dollars in rate increases.

We cannot trust PG&E’s word that it has completed its “self-reporting,” which is akin to the fox guarding the henhouse. It is uncontroverted that the emails released by PG&E collectively demonstrate a pattern and practice of ex parte manipulations between the regulatory affairs personnel of PG&E and the CPUC. This is not surprising. For example and in addition to the recent scandal before us:

³³ See Exhibit A to Strottman Dec.

³⁴ *McKesson HBOC, Inc. v. Superior Court* (2004) 115 Cal.App.4th 1229.

³⁵ *Re Southern Pacific Gas Co.* 1988 WL 1663538 at * 6 (Cal.P.U.C.)(D.88-06-029).

- PG&E was fined \$14.35 million for intentionally delaying to notify the Commission of key discrepancies in its PSEP data, which required a reduction in pressure of Line 147 in San Carlos. The fine included a sanction for misleading the Commission.
- In the Recordkeeping Investigation as part of the Line 132 Proceedings, the Presiding Officer's Decision concluded PG&E committed two Rule 1.1 violations by failing to preserve evidence and refused to provide information requested by the Commission.
- The Presiding Officers' Decision on fines and remedies in the Line 132 proceedings concluded that neither PG&E nor its attorney had acted in good faith during the proceedings.
- San Bruno filed a July 28, 2014 motion for an Order to Show Cause to impose sanctions against PG&E for violations of Commission Rules in the Line 132 proceedings. As San Bruno's motion shows, PG&E violated Rules 1.1 and 8.3 by engaging in 41 improper ex parte communications with the Commission. This motion remains pending in the Line 132 proceedings.
- PG&E deceptively attempted to settle all or part of the Class Location Investigation of the Line 132 Proceedings by issuing a \$375,000 payment for a citation in a separate matter with overlapping issues.³⁶
- PG&E was recently fined \$1,050,000 for violations of the Commission's ex parte rules.³⁷
- As noted by the law and motion judge, PG&E's ex parte violations follow previous ex parte violations, which were followed by a (similar sounding) "commitment" to remedy, develop, and implement a "best-in-class regulatory compliance model" for ensuring compliance with the ex parte rules, to no apparent avail.³⁸ The law and motion judge determined that these circumstances weighed toward significant sanctions beyond those imposed on the "first-time offenders" in Commission precedent.³⁹

When PG&E was fined \$14.35 million for its misrepresentations to the Commission in the Line 147 inquiry, former Commissioner Ferron noted that:

³⁶ A more thorough discussion of these PG&E ethical violations before this Commission, along with full citations, are presented in San Bruno's October 2, 2014 OSC brief at 1-4, are incorporated herewith.

³⁷ D.14-11-041 at 33.

³⁸ D.08-01-021.

³⁹ October 16, 2014 law and motion judge's ruling imposing sanctions at 14.

“This penalty is designed to serve as a deterrent to similar behavior in the future. There should be no question that the CPUC expects nothing less than forthright and timely disclosure in all matters of public safety...delay and obfuscation will not be tolerated.”⁴⁰

The CPUC should follow through on Commissioner Ferron’s directive – the CPUC should not tolerate PG&E’s obfuscation. The public should not be misled by PG&E’s description that the company “self-reported” all the improper emails and contacts when there is proof of a longstanding scheme to corrupt open channels of government regulation and public safety. Instead of stating to the public that it is truly pledging a best-in-class regulatory model, PG&E is reaching deep in its bag of tricks to avoid producing the documents as required by law.⁴¹

PG&E’s self-reporting⁴² and “no excuses” should logically extend to San Bruno’s data request. Instead, PG&E was full of excuses when San Bruno attempted to meet and confer on the documents requests. The fact remains that PG&E admits its internal investigation uncovered 65,000 emails since early 2010, but it chose to voluntarily disclose just 24 of them. That leaves 64,976 communications between PG&E and CPUC that PG&E decided on its own it need not “self-report.” The CPUC, the parties, or the public in general should not assume and accept solution criteria chosen by PG&E.

IV. SAN BRUNO REQUESTS AN ORDER FOR THE APPOINTMENT OF A SPECIAL DISCOVERY MASTER

San Bruno’s motion seeks to get to the heart of the issue of whether the ratepayers’ and intervenors’ due process rights are protected in this proceeding. San Bruno does not trust that

⁴⁰ See CPUC press release dated December 19, 2013, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M083/K902/83902019.PDF>.

⁴¹ Accord, *San Francisco Chronicle Editorial*: PG&E must release all its e-mails with regulator to the public, <http://www.sfgate.com/opinion/article/PG-E-must-release-all-its-e-mails-with-regulator-5810359.php>; *Mercury News Editorial*: PUC Should Order Release of PG&E Emails, http://www.mercurynews.com/editorials/ci_26970100?source=rss

⁴² PG&E’s October 2, 2014 Response to OSC at 3; PG&E’s November 5, 2014 Opening Comments to Proposed Decision at 5.

PG&E can provide the responsive documents through its own picking and choosing. San Bruno believes that this type of request requires the use of a third-party neutral with experience in the Commission's Rules and ethics to determine which communications are part of the normal course of business and which are considered improper. San Bruno recognizes that some forms of communications between PG&E and the CPUC may contain confidential names of employees below the director level, trade secrets, market sensitive information, and/or critical infrastructure information, which may warrant confidential treatment.⁴³ It would be unworkable for the parties to meet and confer on whether these limited exceptions to disclosure apply to each and every email.

Therefore, San Bruno proposes that the Commission appoint an impartial special discovery master to analyze the records and order which communications are exempt from disclosure and which must be produced, similar to an *in camera* inspection. For guidance, California law permits California courts managing complex cases to appoint special masters and the courts have broad discretion in setting the jurisdiction of the appointee.⁴⁴ A special discovery master would assist all parties involved. A special discovery master can review the subject communications, determine which are relevant to San Bruno's motion, whether any responsive documents should be treated as confidential or can be redacted for production, and which ones should be produced.

PG&E identified thousands of email communications and voluntarily produced just 24 of them. It insists that the remaining 64,976 are irrelevant. PG&E says: trust us, and "pay no attention to the man behind the green curtain"⁴⁵ while we increase your gas bill. At the same

⁴³ See e.g., Public Utilities Code §§ 454.5(g); 583.

⁴⁴ See Cal. Rule of Court, Rule 3.750(b)(11).

⁴⁵ The Wizard in *The Wizard of Oz* (1939 film).

time, PG&E insists it deserves a form of credit for time served because it voluntarily disclosed the mere 24 emails. Put another way, allowing PG&E to pick and choose which of its documents to hand over is like a criminal defendant charged with a drug crime conducting his own drug test. “Self-reporting” will not work here.

The Commission should have a special discovery master to resolve San Bruno’s data request because the Commission cannot independently fulfill this function. The communications produced thus far suggest certain influential players within the CPUC and PG&E conspired in order for PG&E to obtain favorable treatment in this case. It is of utmost relevance whether PG&E engaged in additional improper efforts to obtain advantages to the detriment of other parties and ratepayers in general. A Commission-appointed, impartial special discovery master will review and order disclosed relevant documents. The use of a special discovery master will maintain impartiality in the decision to disclose the communications, given that persons within the Commission participated in the “judge shopping” scandal. The Commission’s appointment of a neutral special discovery master will help foster public trust in this agency.

San Bruno proposes that the Commission order the following with respect to a special discovery master:

1. The Commission would encourage parties interested in this discovery dispute to submit no more than two proposed candidates by a certain date;
2. The Commission would select the special discovery master from the group of submitted candidates;
3. He or she would consider briefs in support of or in opposition to the production of documents and standard of review;
4. The Commission would order PG&E to confidentially submit its 65,000 email communications to the special discovery master;
5. The special discovery master would independently analyze the communications

and determine which are relevant to San Bruno's motion;

6. He or she would then consider whether the production of the communications is entitled to confidential protection and whether the confidential information (e.g., PG&E employee names) can be redacted;

7. The special discovery master would make the recommendation to the Commission to order PG&E to disclose the responsive documentation; and

8. PG&E should be ordered to pay for the costs and fees associated with the special discovery master.

V. CONCLUSION

San Bruno respectfully requests that the Commission grant San Bruno's Motion to Compel. The Commission should immediately order that a special discovery master be appointed to determine the scope of PG&E's production in response to San Bruno's data request.

Respectfully Submitted,

/s/ Steven R. Meyers

Steven R. Meyers
Britt K. Strottman
Emilie E. de la Motte
Meyers, Nave, Riback, Silver & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607
Phone: (510) 808-2000
Fax: (510) 444-1108
E-mail: smeyers@meyersnave.com
Attorneys for CITY OF SAN BRUNO

December 15, 2014

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric
Company Proposing Cost of Service and Rates
for Gas Transmission and Storage Services for
the Period 2015-2017 (U39G).

Application 13-12-012
(Filed December 19, 2013)

And Related Matter.

Investigation 14-06-016

**DECLARATION OF BRITT K. STROTTMAN IN SUPPORT OF CITY OF SAN
BRUNO'S MOTION TO COMPEL PACIFIC GAS AND ELECTRIC COMPANY TO
RESPOND TO DATA REQUEST SEEKING PRODUCTION OF DOCUMENTS AND TO
APPOINT A SPECIAL DISCOVERY MASTER**

I, Britt K. Strottman, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am Of Counsel to Meyers, Nave, Riback, Silver & Wilson, attorneys of record for CITY OF SAN BRUNO. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. Attached as Exhibit A is a true and correct copy of Pacific Gas and Electric Company's (PG&E) September 15, 2014 press release entitled: "PG&E Takes Action to Address Ex Parte Communication Issues Identified in Self-Report to CPUC Today; Pledges 'No Excuses' Compliance." This press release was obtained by my office from PG&E's website at http://www.pge.com/about/newsroom/newsreleases/20140915/pge_takes_action_to_address_ex_parte_communication_issues_identified_in_self-report_to_cpuc_today_pledges_no_excuses_compliance.shtml.

3. Attached as Exhibit B is a true and correct copy of San Bruno's data request No. 1 served on PG&E on October 7, 2014.

4. Attached as Exhibit C is a true and correct copy of an October 20, 2014 email which I sent to PG&E's counsel, Lise Jordan, inquiring about PG&E's outstanding response to San Bruno's data request.

5. Attached as Exhibit D is a true and correct copy of PG&E's response to San Bruno's data request No. 1.

6. Counsel for both San Bruno and PG&E engaged in a meet-and-confer telephone conference call on November 5, 2014. During this conference call, PG&E argued in part that it cannot comply with San Bruno's data request because some of the communications are protected by the attorney-client privilege and attorney work-product doctrine.

7. As part of our meet-and-confer efforts, PG&E proposed that San Bruno narrow its data request by providing "search terms." It is San Bruno's position that it cannot tailor its request to specific search terms, because the communications will not self-identify as "ex parte" or "improper." San Bruno cannot possibly know the nature of all these communications, and search terms could easily miss large segments of relevant documents.

8. Attached as Exhibit E is a true and correct copy of an email I sent on November 17, 2014 to PG&E's counsel in which I summarized the questions discussed during our meet-and-confer telephone conference.

9. Attached as Exhibit F is a true and correct copy of PG&E counsel's response to my November 17, 2014 email summary of our conference call.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 15, 2014, at Oakland, California.



Britt K. Strottman

EXHIBIT A

News Releases


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PG&E TAKES ACTION TO ADDRESS EX PARTE COMMUNICATION ISSUES IDENTIFIED IN SELF-REPORT TO CPUC TODAY; PLEDGES 'NO EXCUSES' COMPLIANCE

Release Date: September 15, 2014

Contact: PG&E External Communications (415) 973-5930

San Francisco, Calif.— Pacific Gas and Electric Company (PG&E) today notified the California Public Utilities Commission (CPUC) that an extensive internal review of nearly five years of emails between the company and officials at the Commission has identified a number of instances in which PG&E believes it violated the CPUC's rules governing communications with the state regulator in the pending Gas Transmission & Storage rate case.

The communications reported to the CPUC today occurred over a three-week period in January, 2014, during which time a number of e-mails were sent to the CPUC concerning the assignment of administrative law judges and commissioners to the Gas Transmission & Storage rate case. These e-mails may have violated CPUC rules prohibiting certain ex parte communications -- meaning communication with decision-makers that takes place without the knowledge of all parties to a proceeding.

These communications were identified after the company voluntarily chose to broaden its internal review of any potential ex parte communications well beyond those communications referenced in a San Bruno motion filed last July. The expanded review included more than 65,000 emails to and from the Commission since early 2010.

Actions to Address

"As a company, we must be committed to complying with both the letter and the spirit of the law and PG&E's own Code of Conduct at all times. No excuses. That is, and must be, the standard for our behavior individually and as a company," Chairman and CEO Tony Earley and President Chris Johns said in a joint letter to employees today.

They outlined actions resulting from the internal review process:

Three officers will no longer be employed by the company. They are the senior vice president of regulatory affairs, vice president of regulatory relations, and vice president of regulatory proceedings and rates.

PG&E has appointed Steve Malnight as senior vice president of regulatory relations. Previously, Malnight was vice president of customer energy solutions. Malnight will report to PG&E President Chris Johns.

The company is creating the new role of chief regulatory compliance officer, whose mandate will be to help oversee compliance with all requirements governing PG&E's interactions with the CPUC. The position will report to Chairman and CEO Tony Earley and to the Audit Committee of the PG&E Board of Directors.

The company has engaged Ken Salazar, a partner in the WilmerHale law firm, as special counsel on regulatory compliance matters to assist in developing a best-in-class regulatory compliance model. Salazar has deep experience in regulatory and energy matters. Among his roles has been service as Secretary of the U.S. Department of the Interior, U.S. Senator from Colorado, Attorney General of Colorado and Executive Director of the Colorado Department of Natural Resources.

PG&E plans additional, mandatory training for all employees who routinely interact with PG&E's regulators.

Letter to Employees

In their joint letter announcing these actions to employees, Earley and Johns said, in part:

"As a company, we must be committed to complying with both the letter and the spirit of the law and PG&E's own Code of Conduct at all times. No excuses. That is, and must be, the standard for our behavior individually and as a company.

"We all have a responsibility to know, understand and comply with all of the rules, including PG&E's own Code of Conduct, as they apply to our respective roles.

"In these instances, there was behavior that clearly failed to meet that standard, and we greatly regret that. Even absent an ex parte violation, these actions did not represent the company in the manner we expect of our officers. As a result, we took immediate and definitive action. We're continuing this review and will take additional actions if warranted.

"Beyond that, it is also clear that we need to take additional steps to raise the level of professionalism and propriety in our interactions with regulators. While many of us have felt that criticism characterizing PG&E's relationship with the CPUC as 'cozy' has been unfair, we need to acknowledge that we have earned some of the criticism and we need to take action to change that.

"As we have said previously, we have been very disappointed by the tone of some emails that have been reviewed. While not violations of regulations, they are unprofessional and unacceptable.

"We've made truly incredible progress in terms of our operational focus and in creating a strong safety culture at PG&E. But to be successful, it's also critical that our culture demonstrates an unfailing commitment to conducting our business in compliance with both the letter and spirit of the law and our Code of Conduct and with a high degree of professionalism."

PG&E's filing with the CPUC can be read [here](#).

About PG&E

Pacific Gas and Electric Company, a subsidiary of [PG&E Corporation](#) (NYSE:PCG), is one of the largest combined natural gas and electric utilities in the United States. Based in San Francisco, with more than 20,000 employees, the company delivers some of the nation's cleanest energy to nearly 16 million people in Northern and Central California. For more information, visit www.pge.com/ and <http://www.pge.com/about/newsroom/>.

"PG&E" refers to Pacific Gas and Electric Company, a subsidiary of PG&E Corporation. © 2014 Pacific Gas and Electric Company. All rights reserved.

EXHIBIT B

From: Strottman, Britt
Sent: Tuesday, October 07, 2014 6:54 AM
To: 'LHJ2@pge.com'
Cc: 'EFM2@pge.com'; 'KCK5@pge.com'; Connie Jackson <CJackson@sanbruno.ca.gov> (CJackson@sanbruno.ca.gov); Meyers, Steven
Subject: A.13-12-012 - 10/7/14 San Bruno data request

Lise, please see the attached data request on behalf of the City of San Bruno. Thank you, Britt

Britt K. Strottman
Attorney at Law
MEYERS NAVE

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Oakland, CA 94607
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www.publiclawnews.com

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**A.13-12-012 PG&E 2015 TY GT&S
City of San Bruno Data Request**

Data Request Number: San Bruno-1 (October 7, 2014 PG&E Notice)

Date Sent: October 7, 2014

Response Due: October 20, 2014 (expedited)

Instructions

Please provide a searchable electronic response to the following questions. A hard copy response is unnecessary. The response should be provided as attachments sent by e-mail or on a CD sent by mail to the following:

Britt K. Strottman
Special Counsel
City of San Bruno (San Bruno)
555 12th Street; Suite 1500
Oakland, CA 94607
bstrottman@meyersnave.com

For each question, please provide the name of each person who materially contributed to the preparation of the response. If different, please also identify the PG&E witness who would be prepared to respond to cross-examination questions regarding the response.

For any questions requesting numerical recorded data, please provide all responses in working Excel spreadsheet format if so available, with cells and formulae functioning.

For any question requesting documents, please interpret the term broadly to include any and all hard copy or electronic documents or records in PG&E's possession.

For any response that includes information that PG&E wishes to keep confidential, please provide a version of the response with all confidential information redacted.

Preface to Set 1 Questions

In order to expedite responses to these requests, San Bruno is informing PG&E in advance of the reasons for these requests and why they are relevant to this case.

These data requests are in response to PG&E's *Notice of Improper Ex Parte Communications* that PG&E served in this case on September 15, 2014 and the related PG&E Press Release of the same date. In San Bruno's view, the released e-mails, in addition to showing clear and repeated violations of CPUC Rule of Practice and Procedure 8.3(f), show a brazen and successful effort by high-ranking PG&E regulatory officials to manipulate the decision-making process in this case. Among other things, the e-mails show that PG&E (successfully) urged President Peevey's office to reject a proposed assignment of an administrative law judge (ALJ) to this case on the grounds that "she has a history of being very hard on us" and presided over a case "where we got

screwed royally . . .”, even though the rules explicitly ban such ex parte communications. The e-mails reflect a presumption by PG&E that the Commission should do as PG&E wishes on this important matter and invite the question: in what other communications with CPUC employees did PG&E representatives privately attempt to instruct Commission staff on what to do in order to avoid displeasing PG&E?

Accordingly, these data requests seek to determine whether there are other instances in which PG&E sought to improperly interfere with the Commission staff’s judgment and prerogatives on matters related to this case. Furthermore, if such instances exist, these data requests seek to probe whether PG&E efforts were successful. Evidence of such efforts, successful or not, are highly relevant to this case in a variety of ways, including with respect to the many instances in which PG&E may cite action or non-action by CPUC staff in support of its proposals. (See, e.g., PG&E Rebuttal Testimony, Chapter 13, Section D.)

1. Notwithstanding the below requests, please provide the 65,000 email communications between PG&E and the Commission since early 2010 as referred to in PG&E’s press release:

“These communications were identified after the company voluntarily chose to broaden its internal review of any potential ex parte communications well beyond those communications referenced in a San Bruno motion filed last July. The expanded review included more than 65,000 emails to and from the Commission since early 2010.”

http://www.pge.com/about/newsroom/newsreleases/20140915/pge_takes_action_to_address_ex_parte_communication_issues_identified_in_self-report_to_cpuc_today__pledges_no_excuses_compliance.shtml

2. Please provide all documents in PG&E’s possession that reflect any written or oral communication which: (i) took place on or after 12/19/13; (ii) relates to any matter concerning PG&E’s gas transmission or storage operations or this case; and (iii) includes among the parties to the communication (including as “cc” or “bcc” parties) a PG&E employee or other PG&E representative and an employee or other representative of the CPUC (other than the Office of Ratepayer Advocates).

Please do not include in the response any documents that: (i) consist solely of a formal data request from the CPUC and/or a formal data request response from PG&E; or (ii) were served on the service list of a CPUC proceeding. For purposes of this question, “formal data request” means a data request assigned a data request tracking number by PG&E.

3. Please provide all documents in PG&E’s possession that reflect any written or oral communication which: (i) took place after 4/18/11 (the date of issuance of D.11-04-031) and before 12/19/13; (ii) relates to any matter concerning PG&E’s gas transmission or storage operations or the implementation of D.11-04-031; and (iii) includes among the parties to the communication (including as “cc” or “bcc” parties) a PG&E employee or other PG&E

representative and an employee or other representative of the CPUC (other than the Office of Ratepayer Advocates).

EXHIBIT C

From: Strottman, Britt
Sent: Monday, October 20, 2014 10:38 AM
To: LHJ2@pge.com
Cc: Connie Jackson <CJackson@sanbruno.ca.gov> (CJackson@sanbruno.ca.gov); Meyers, Steven
Subject: FW: A.13-12-012 - 10/7/14 San Bruno data request

Lise, I left you a voicemail this morning to inquire whether PG&E is going to comply with San Bruno's data request dated October 7, 2014 (please see attached). Please let me know PG&E's response to San Bruno's data request by close of business today, October 20, 2014. I can be reached at 510-808-2083. Thank you, Britt

Britt K. Strottman
Attorney at Law
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Oakland, CA 94607
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Fax: 510.444.1108
bstrottman@meyersnave.com
www.meyersnave.com
www.publiclawnews.com

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From: Strottman, Britt
Sent: Tuesday, October 07, 2014 6:54 AM
To: 'LHJ2@pge.com'
Cc: 'EFM2@pge.com'; 'KCK5@pge.com'; Connie Jackson <CJackson@sanbruno.ca.gov> (CJackson@sanbruno.ca.gov); Meyers, Steven
Subject: A.13-12-012 - 10/7/14 San Bruno data request

Lise, please see the attached data request on behalf of the City of San Bruno. Thank you, Britt

Britt K. Strottman
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bstrottman@meyersnave.com
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EXHIBIT D

From: GTS Rate Case 2015 [<mailto:GTSRateCase2015@pge.com>]
Sent: Monday, October 20, 2014 1:54 PM
To: Strottman, Britt
Cc: Cotroneo, Eileen; Jordan, Lise (Law); Klein, Kerry (Law)
Subject: A.13-12-012: PGE's Response to SanBrunoCity_001

Britt Strottman:

Attached is PG&E's response to the City of San Bruno's first data request (SanBrunoCity_001) for the 2015 GT&S Rate Case.

Please let me know if you have any issues opening the files. If you have any questions regarding the response, please contact Eileen Cotroneo at 415-973-2751 or via email at EFM2@pge.com.

Thank you,
Scott

Jasmin Anes & Scott Noyer
415-973-8225 / 415-973-3170
GT&S 2015 Coordinators

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PG&E is committed to protecting our customers' privacy.
To learn more, please visit <http://www.pge.com/about/company/privacy/customer/>

PACIFIC GAS AND ELECTRIC COMPANY
Gas Transmission and Storage Rate Case 2015
Application 13-12-012
Data Response

PG&E Data Request No.:	SanBrunoCity_001-01		
PG&E File Name:	GTS-RateCase2015_DR_SanBrunoCity_001-Q01		
Request Date:	October 7, 2014	Requester DR No.:	001
Date Sent:	October 20, 2014	Requesting Party:	City of San Bruno
PG&E Witness:		Requester:	Britt K. Strottman

QUESTION 1

Notwithstanding the below requests, please provide the 65,000 email communications between PG&E and the Commission since early 2010 as referred to in PG&E's press release:

"These communications were identified after the company voluntarily chose to broaden its internal review of any potential ex parte communications well beyond those communications referenced in a San Bruno motion filed last July. The expanded review included more than 65,000 emails to and from the Commission since early 2010."

[http://www.pge.com/about/newsroom/newsreleases/20140915/pge takes action to address ex parte communication issues identified in self-report to cpuc today pledges no excuses compliance.shtml](http://www.pge.com/about/newsroom/newsreleases/20140915/pge_takes_action_to_address_ex_parte_communication_issues_identified_in_self-report_to_cpuc_today_pledges_no_excuses_compliance.shtml)

ANSWER 1

PG&E objects to this request on the grounds that it is overly broad, and that it seeks information that is neither relevant to the GT&S Rate Case nor reasonably calculated to lead to the discovery of admissible evidence. This request was denied in ALJ Yacknin "Law and Motion Judge's Ruling Imposing Sanctions for Violation of Ex Parte Rules", Ordering Paragraph 5, pp 23-24.

EXHIBIT E

From: Strottman, Britt [<mailto:bstrottman@meyersnave.com>]

Sent: Monday, November 17, 2014 11:51 AM

To: Jordan, Lise (Law)

Cc: Cotroneo, Eileen; Klein, Kerry (Law); GTS Rate Case 2015; Connie Jackson <CJackson@sanbruno.ca.gov> (CJackson@sanbruno.ca.gov); Meyers, Steven; Schenker, Marty; Marc Zafferano

Subject: 11/5 meet and confer

Lise, thank you for your time on 11/5 to meet and confer on San Bruno's 10/7/14 data request to PG&E. At the beginning of the call, City Attorney Marc Zafferano asked the following questions about the "65,000" emails that were the subject of PG&E's press release of 9-15-14. For reference, here is the list of questions and the PG&E team's response:

1. Exactly how many emails was PG&E referring to when it said in the press release that it had reviewed "65,000" emails? No one on the call was available to answer that question.
2. Have the emails been numbered? PG&E stated that the emails are located on a "review platform." The set of documents are archived at the company. No one on the call could say whether the documents were numbered.
3. Have the emails been categorized or organized by date, author, or recipient, and if so, what are those categories? PG&E refused to respond, stating that the answer is protected by attorney work product.
4. Are the emails subject to a litigation hold? PG&E stated that emails related to the explosion were subject to a litigation hold right after the explosion; however, no one on the call directly answered the question of whether the 65K emails identified by PG&E were subject to a litigation hold.
5. Have all of the emails been printed, and if so, where are they located? PG&E stated that they have not been printed.
6. Have the emails been the subject of a request or an order to preserve them, and if so, from whom and when? PG&E stated that they have been requested, but refused to respond to the remainder of the question.
7. What was PG&E's criteria for deciding which emails to review, and who made the decision to use that criteria? PG&E refused to respond, stating that the answer is protected by attorney work product.
8. Is there any internal investigation going on right now with respect to the emails? PG&E refused to respond, stating that the answer is protected by attorney work product. The City pointed out that in PG&E's SEC filing and press release, PG&E announced that it was conducting an internal investigation.
9. Have the emails been provided to anyone outside of PG&E? No one on the call knew the answer to that question.

In sum, PG&E either could not answer, or refused to answer, eight of nine simple questions about the "65,000" emails at issue. PG&E announced the existence of these emails in the press release, and has since attempted to obtain a substantial economic advantage for "self-reporting" a tiny fraction of them both in the press and in connection with several ongoing proceedings at the CPUC. But when asked a series of basic questions about the emails, including those emails that PG&E chose not to disclose for reasons unknown to anyone other than PG&E, PG&E either could not reply or refused to reply. Instead, as the City understands PG&E's position during our call, PG&E is asking the City to "narrow" its request in the absence of any information about the vast majority of the emails at issue.

In our call, you mentioned that the City's request is not related to, and does not refer to the GT&S rate case. But the City does not know whether one, two, several hundred, or several thousand undisclosed emails might relate to that case or not. Once PG&E provides responses to the basic questions we have asked, the City will have the information it needs to determine if the request could

reasonably be limited. Until then, the City has no basis on which to make such a decision.

You also asked if the City would be amenable to accepting a "binding ruling" on TURN's data request. At this point, San Bruno is unwilling to do so. San Bruno's request is different than TURN's request in that it asks for the "65,000" emails that PG&E announced it had reviewed between PG&E and the CPUC. San Bruno is not a party to any meet-and-confer negotiations between TURN and PG&E.

Based on PG&E's objections and its inability to respond to the simple questions regarding the documents, it does not appear that further discussions would be productive.

Thank you, Britt

Britt K. Strottman
Attorney at Law
MEYERS NAVE
555 12th Street, Suite 1500
Oakland, CA 94607
Phone: 510.808.2000
Fax: 510.444.1108
bstrottman@meyersnave.com
www.meyersnave.com
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EXHIBIT F

From: Jordan, Lise (Law) [mailto:LHJ2@pge.com]
Sent: Tuesday, November 18, 2014 5:07 PM
To: Strottman, Britt
Cc: Cotroneo, Eileen; Klein, Kerry (Law); GTS Rate Case 2015; Connie Jackson <CJackson@sanbruno.ca.gov> (CJackson@sanbruno.ca.gov); Meyers, Steven; Schenker, Marty; Marc Zafferano
Subject: RE: 11/5 meet and confer

Britt,

Several of your characterizations of our responses in your e-mail do not accurately reflect our discussions. In addition, with respect to the three questions you included in your data request, you agreed that two of them were the same questions as asked by TURN (Questions 2 and 3). With respect to those two questions, given the breadth and burden those questions pose, we requested that San Bruno work with TURN to ensure that the response we provide to TURN will satisfy your requests as well. We stated that we are answering TURN's questions, but do not think it reasonable to answer the same questions in two different ways.

We do agree with you that further discussions would not be productive.

Sincerely,

Lise H. Jordan | Attorney | Pacific Gas and Electric Company
415.973.6965 office

From: Strottman, Britt [<mailto:bstrottman@meyersnave.com>]
Sent: Monday, November 17, 2014 11:51 AM
To: Jordan, Lise (Law)
Cc: Cotroneo, Eileen; Klein, Kerry (Law); GTS Rate Case 2015; Connie Jackson <CJackson@sanbruno.ca.gov> (CJackson@sanbruno.ca.gov); Meyers, Steven; Schenker, Marty; Marc Zafferano
Subject: 11/5 meet and confer

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1. Exactly how many emails was PG&E referring to when it said in the press release that it had reviewed "65,000" emails? No one on the call was available to answer that question.
2. Have the emails been numbered? PG&E stated that the emails are located on a "review platform." The set of documents are archived at the company. No one on the call could say whether the documents were numbered.
3. Have the emails been categorized or organized by date, author, or recipient, and if so, what are those categories? PG&E refused to respond, stating that the answer is protected by attorney work product.
4. Are the emails subject to a litigation hold? PG&E stated that emails related to the explosion were subject to a litigation hold right after the explosion; however, no one on the call directly answered the question of whether the 65K emails identified by PG&E were subject to a litigation hold.
5. Have all of the emails been printed, and if so, where are they located? PG&E stated that they have not been printed.
6. Have the emails been the subject of a request or an order to preserve them, and if so, from whom and when? PG&E stated that they have been requested, but refused to respond to the remainder of the question.
7. What was PG&E's criteria for deciding which emails to review, and who made the decision to use that criteria? PG&E refused to respond, stating that the answer is protected by attorney work product.
8. Is there any internal investigation going on right now with respect to the emails? PG&E refused to respond, stating that the answer is protected by attorney work product. The City pointed out that in PG&E's SEC filing and press release, PG&E announced that it was conducting an internal investigation.
9. Have the emails been provided to anyone outside of PG&E? No one on the call knew the answer to that question.

In sum, PG&E either could not answer, or refused to answer, eight of nine simple questions about the "65,000" emails at issue. PG&E announced the existence of these emails in the press release, and has since attempted to obtain a substantial economic advantage for "self-reporting" a tiny fraction of them both in the press and in connection with several ongoing proceedings at the CPUC. But when asked a series of basic questions about the emails, including those emails that PG&E chose not to disclose for reasons unknown to anyone other than PG&E, PG&E either could not reply or refused to reply. Instead, as the City understands PG&E's position during our call, PG&E is asking the City to "narrow" its request in the absence of any information about the vast majority of the emails at issue.

In our call, you mentioned that the City's request is not related to, and does not refer to the GT&S rate case. But the City does not know whether one, two, several hundred, or several thousand undisclosed emails might relate to that case or not. Once PG&E provides responses to the basic questions we have asked, the City will have the information it needs to determine if the request could

reasonably be limited. Until then, the City has no basis on which to make such a decision.

You also asked if the City would be amenable to accepting a "binding ruling" on TURN's data request. At this point, San Bruno is unwilling to do so. San Bruno's request is different than TURN's request in that it asks for the "65,000" emails that PG&E announced it had reviewed between PG&E and the CPUC. San Bruno is not a party to any meet-and-confer negotiations between TURN and PG&E.

Based on PG&E's objections and its inability to respond to the simple questions regarding the documents, it does not appear that further discussions would be productive.

Thank you, Britt

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company Proposing Cost of Service and Rates for Gas Transmission and Storage Services for the Period 2015-2017 (U39G).

Application 13-12-012
(Filed December 19, 2013)

And Related Matter.

Investigation 14-06-016

PROPOSED RULING GRANTING MOTION OF THE CITY OF SAN BRUNO TO COMPEL DISCOVERY AND APPOINTING A SPECIAL DISCOVERY MASTER

On December 1, 2014, the City of San Bruno (San Bruno) filed a Motion to Compel Pacific Gas and Electric Company (PG&E) to file responses to its data request. The motion requests an order directing PG&E to provide documents responsive to San Bruno's data request No. 1, but San Bruno has limited its motion to compel only to documents that reflect any improper communication or influence between PG&E and the Commission.

San Bruno has demonstrated that its data request is proper under the circumstances and in light of the disclosures in the Improper Ex Parte Notices filed by PG&E on September 15, 2014 and October 6, 2014. PG&E's objections to San Bruno's data request are without merit.

San Bruno's data request would require the analysis of the 65,000 emails identified by PG&E and determine which ones would be considered improper communications. Given the unique nature of these proceedings, such an undertaking should not be made by the intervenors, PG&E, nor the Commission itself. Therefore, San Bruno proposes that the Commission appoint a special discovery master who will analyze the 65,000 and determine which ones are responsive to San Bruno's motion and order the responsive documents produced. The Commission finds

that San Bruno has submitted good cause to appoint a special discovery master for the limited purposes of independently determining whether PG&E possesses any documents responsive to San Bruno's data request.

IT IS RULED THAT San Bruno's Motion for an Order to Compel PG&E's response to San Bruno's data request No. 1 is GRANTED. San Bruno's Motion for a special discovery master is also GRANTED. PG&E is hereby ordered to produce all the 65,000 emails to the special discovery master once he or she is appointed. Said discovery master will independently review the PG&E-CPUC communications and determine whether any of the communications reflect in any way improper communications with the Commission. The Commission will make its decision to appoint said discovery master on _____. The Commission invites interested parties involved in this proceeding to submit no more than two (2) proposed special discovery masters by _____.